

**ENTERED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

August 08, 2019  
David J. Bradley, Clerk

LEE HAMILTON, JR.,  
TDCJ #1132938,

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Plaintiff,

v.

CIVIL ACTION NO. H-19-2259

CASON MCCUNE, et al.,

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Defendants.

**MEMORANDUM OPINION AND ORDER**

State inmate Lee Hamilton, Jr. (TDCJ #1132938) has filed a Prisoner's Civil Rights Complaint under 42 U.S.C. § 1983 ("Complaint") (Docket Entry No. 1), concerning the conditions of his confinement at the Estelle Unit in Huntsville. Because Hamilton is an inmate who proceeds in forma pauperis, the court is required to scrutinize the Complaint and dismiss the case if it determines that the action is "frivolous or malicious;" "fails to state a claim on which relief may be granted;" or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see also 28 U.S.C. § 1915A. After reviewing all of the pleadings as required, the court concludes that this case must be dismissed for reasons explained briefly below.

## **I. Background**

Hamilton is currently incarcerated by the Texas Department of Criminal Justice - Correctional Institutions Division ("TDCJ") at the Estelle Unit in Huntsville.<sup>1</sup> He has filed this civil rights action under 42 U.S.C. § 1983 against the following defendants employed by TDCJ at the Estelle Unit facility: (1) Cason McCune; (2) Vinita Hamilton; (3) Lynette Whitfield; (4) Dr. Ernestine Julye; (5) Nurse Brenda Butler; (6) Business Manager Kharl Mott; (7) Major Bobby Rigsby; and (6) Warden Tracy Hutto.<sup>2</sup>

Hamilton alleges that McCune, Rigsby, Butler, and Whitfield, along with a nurse identified as Teresa Green, have formed a plot against him by implanting a "device" on him and placing calls to his mother.<sup>3</sup> He believes that Mott, Dr. Julye, and Warden Hutto know about the plot, but have done nothing to stop it.<sup>4</sup> Hamilton wants all of the defendants to be arrested and charged with a criminal offense.<sup>5</sup> He also wants his money back.<sup>6</sup>

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<sup>1</sup>Complaint, Docket Entry No. 1, p. 3.

<sup>2</sup>Id. at 1, 3.

<sup>3</sup>Id. at 4.

<sup>4</sup>Id. at 3, 4.

<sup>5</sup>Id. at 4.

<sup>6</sup>Id.

## II. Discussion

A complaint filed by a litigant who proceeds in forma pauperis may be dismissed as malicious under 28 U.S.C. § 1915(e) (2) (B) if it duplicates allegations made in another federal lawsuit by the same plaintiff. See Pittman v. Moore, 980 F.2d 994, 994 (5th Cir. 1993) (per curiam). The allegations made by Hamilton against McCune, Butler, Green, and Rigsby have been made previously in another lawsuit, which was dismissed as frivolous on July 3, 2019. See Hamilton v. McCune, Civil No. H-19-1901 (S.D. Tex.) (Docket Entry No. 8). In that case, Hamilton raised the similar allegations and asked for criminal charges of conspiracy against prison officials who had covertly implanted a listening device on Hamilton to intercept his thoughts. See id.

The Fifth Circuit has held that "a claim qualifies as malicious if it is virtually identical to and based on the same series of events as a claim previously brought by the plaintiff." Shakouri v. Davis, 923 F.3d 407, 410 (5th Cir. 2019) (citing Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)). Because Hamilton has made the same or similar claims previously, the court concludes that the pending Complaint is subject to dismissal as malicious. See, e.g., Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989) (duplicative claims may be dismissed *sua sponte*). Accordingly, this civil action will be dismissed pursuant to 28 U.S.C. § 1915(e) (2) (B) as malicious.

### III. Conclusion and Order

Accordingly, the court **ORDERS** as follows:

1. This case is **DISMISSED with prejudice** as malicious pursuant to 28 U.S.C. § 1915(e) (2) (B).
2. The dismissal will count as a **STRIKE** for purposes of 28 U.S.C. § 1915(g).

**The Clerk will provide a copy of this Memorandum Opinion and Order to the plaintiff. The Clerk will also send a copy of this Order to (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159; and (2) the Three Strikes List at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).**

**SIGNED** at Houston, Texas, on this 8<sup>th</sup> day of August, 2019.



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SIM LAKE  
UNITED STATES DISTRICT JUDGE